Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-1134

ISADORE GOLDMAN,
Petitioner

v.

SEARS, ROEBUCK AND CO.,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Joseph M. Kehoe, Jr., Esq.
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TABLE OF CONTENTS

Page

Counter-Statement of Question Presented 1

Counter-Statement of the Case 2

Argument

All Questions Raised by the Petitioner Must Be Resolved Against Him by Virtue of the Holding in United Airlines, Inc. v. Evans, (1977) 431 U.S. 553, 52 L.Ed.2d 571, 97 S.Ct. 1885, and the Subsequent Decisions of the Court of Appeals Relative Thereto and, Therefore, the Petition for Writ of Certiorari Should be Denied . 5

Conclusion 11

Certificate of Service 12

Appendix R-1

Copy of Complaint Filed in District Court 14

TABLE OF CITATIONS

Cases:

Bartmess v. Drewrys U.S.A., Inc.
444 F.2d 1186 (CA 7-1971) 9

Chappell v. Machine Works Company
601 F.2d 1295, 1298 (CA 5-1979) 7, 9

Charlier v. S. C. Johnson & Son, Inc.
556 F.2d 761 (CA 5-1977) 7

Clark v. Olinkraft, Inc.
556 F.2d 1219 (5th Circuit — 1977) 7

Cox v. U.S. Gypsum Co.
409 F.2d 289 (CA 7-1969) 9

Cutliff v. Greyhound Lines, Inc.
558 F.2d 803, 807 (CA 5-1977) 9

Cases: Page

Macklin v. Spector Freight Systems, Inc.
478 F.2d 979 (CA 3-1973) 9

Martin v. Georgia-Pacific Corp.
568 F.2d 58 (CA 8-1977) 8

Reeb v. Economic Opportunity Atlantic Inc.
516 F.2d 922, 926 (CA 5-1975) 9

Richard v. McDonnell Douglas Corp.
469 F.2d 1249 (CA 8-1972) 9

Smith v. American President Lines, Ltd.
571 F.2d 102 (CA 2-1978) 8

Trabucco v. Delta Airlines
590 F.2d 315 (CA 6-1979) 8

United Airlines, Inc. v. Evans
(1977) 431 U.S. 553, 52 L.Ed.2d 571,
97 S.Ct. 1885 ..... 1, 5, 6, 7, 8, 9

Statutes:

Title VII Civil Rights Acts of 1964,
42 U.S.C. 2000e et seq. 2, 3, 6, 7

29 U.S.C. 621 et seq.
Age Discrimination in Employment
Act (ADEA) 2, 5, 7

42 U.S.C. 2000e-5(e) 3

29 U.S.C. 626(d)(1) 3

29 U.S.C. 626(e) 4

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1134

ISADORE GOLDMAN,
Petitioner

v.

SEARS, ROEBUCK AND CO.,
Respondent

BRIEF IN OPPOSTITION TO PETITION FOR WRIT OF CERTIORARI

COUNTER-STATEMENT OF QUESTION PRESENTED

Must not all the questions raised by the Petitioner be resolved against him by virtue of the holding in *United Airlines, Inc. v. Evans* (1977), 431 U.S. 553, 52 L.Ed.2d 571, 97 S.Ct. 1885, and the subsequent decisions of the Courts of Appeals relative thereto, and, therefore, should not the Petition for Writ of Certiorari be denied?

COUNTER-STATEMENT OF THE CASE

The Petitioner filed the Complaint in the instant action in the United States District Court for the District of Massachusetts on March 29, 1978. The complaint alleged religious discrimination in violation of Title VII of the Civil Rights Act of 1964 and age discrimination in violation of the Age Discrimination in Employment Act (ADEA) 29 U.S.C. 621 et seq.

In the Complaint (copy of which is appended hereto as Appendix "R-1"), the Petitioner alleged that he had been subjected to harassment and other discriminatory treatment beginning in 1972. (Paragraphs 5 and 6 of Complaint). On or about July 27, 1973, he alleged he was transferred to the store's shoe department at a substantial loss of income (Paragraph 7 of Complaint). In Paragraph 9 of the Complaint he alleged that "sometime in 1975" he was transferred from the shoe department to the electrical department and thus sustained an additional loss of income. Thereafter, he alleged that he made various requests to be transferred back to his original job in the large appliance department but that Sears refused to retransfer him. The second or last transfer, that from the shoe to the electrical department alleged in paragraph 9 of the Complaint to have occurred "sometime in 1975", was later admitted by the Petitioner to have occurred on August 7, 1974. This admission was contained in Petitioner's Memorandum in Opposition to the Respondent's Motion to Dismiss filed in the District Court. (See Appendix to the Petition for Writ of Certiorari, page A-3; see also the opinion of the Court of Appeals at page A-14 of the said Appendix particularly footnote 7).

The Complaint further alleges that the Equal Employment Opportunity Commission (EEOC) on October 13, 1977 found reasonable cause to believe that discrimination may have occurred (see Paragraph 12 of the Complaint and Exhibit C attached thereto which is the

"Determination" of the Commission, page 28 of Appendix R-1). Thereafter, the Commission, having been unable to resolve the Complaint by informal methods, informed the Petitioner that it would not sue the Respondent and issued a right to sue letter to the Petitioner.

Upon being served, the Respondent moved to dismiss the Complaint for failure to state a claim upon which relief could be granted for the following reasons:

> (a) Petitioner had not filed his charge of religious discrimination with the EEOC within the time required by Title VII, 42 U.S.C. 2000e-5(e), i.e., within 180 days from the date the alleged unlawful practice occurred.
>
> According to Paragraph 11 of the Complaint, the charge was filed with the EEOC on July 16, 1976. This is 1185 days after the first transfer, that from the appliance to the shoe department as alleged in Paragraph 7 of the Complaint. The filing with the EEOC was 723 days after the second or last transfer which, as explained above, the Petitioner has admitted to have occurred on August 7, 1974. If the date alleged in the Complaint namely "sometime in 1975" be accepted, the Petitioner was still out of time even if it be assumed that the transfer occurred on the very last day of 1975. It is to be noted that on Page 3 of the Petition for Writ of Certiorari, the Petitioner now states that this second or last transfer occurred "sometime late in 1974 or early 1975".
>
> (b) Petitioner had not filed his charge of age discrimination with the Secretary of Labor within the time required by the ADEA, 29 U.S.C. 626(d)(1), likewise 180 days after the occurrence of the unlawful practice. The Petitioner sent the Department of Labor a Letter of Intent to Sue on the basis of age discrimination on September 3, 1976, a date which is undisputed by either party to this liti-

gation (see Petition for Writ of Certiorari, page 6 and opinion of the Court of Appeals at pages A-11, A-12 of the Appendix attached to the Petition). Therefore, in regard to the age discrimination claims, a period of more than one month and a half must be added to the long periods enumerated in subparagraph (a) above.

(c) Petitioner had failed to file the Complaint in the federal court on the ground of age discrimination within the required two year period subsequent to the occurrence of the alleged discrimatory practice as required by 29 U.S.C. 626(e). As admitted in the Complaint, the last discriminatory act occurred at the latest in 1975 and the Complaint was not filed in the District Court until March 29, 1978.

The only amendment to the Complaint ever made or attempted by the Petitioner was on June 16, 1978. The only purpose was to add the then store manager, Mr. Moore, as an additional defendant.

The District Court granted the Respondent's Motion to Dismiss the Complaint. The Court of Appeals affirmed. The well reasoned opinions of both courts are attached to the Petitioner's Petition for Writ of Certiorari as appendices.

ARGUMENT

All Questions Raised by the Petitioner Must Be Resolved Against Him by Virtue of the Holding in United Airlines, Inc. v. Evans (1977) 431 U.S. 553, 52 L.Ed.2d 571, 97 S.Ct. 1885, and the Subsequent Decisions of the Court of Appeals Relative Thereto and, Therefore, the Petition for Writ of Certiorari Should Be Denied

The only acts alleged by the Respondent to be discriminatory occurred well without the statutory periods within which claim must be made to the EEOC or Secretary of Labor. In addition, the suit itself was out of time under the ADEA. The Petitioner attempts to avoid the time requirements by claiming that the two discrete acts of Respondent in transferring Petitioner to other jobs were continuing violations in that the Petitioner continued to suffer from the effects of these acts long after their occurrence.

His arguments would appear to be on all fours with the arguments which were rejected by the Supreme Court in *United Airlines, Inc. v. Evans*, supra. In the *Evans* case, the complaint alleged an act of discrimination by the airline forcing the flight attendant to resign at the time of her marriage. Thereafter, she was rehired but was not given the seniority privileges she would have had if her past employment had been considered. She did not file a claim until long after the time of her discharge when the limitations period had clearly run. She attempted to justify her right to make this belated claim on the basis that she was still suffering from the effects of her improper discharge since she had been unable to obtain from the airline upon various requests, the return of her additional seniority rights.

The Supreme Court speaking at 52 L.Ed.2d 578, 431 U.S. 558, rejected this contention in the following language:

"[5] Respondent is correct in pointing out that the seniority system gives present effect to a past act of discrimination. But United was entitled to treat the past act as lawful after respondent failed to file a charge of discrimination within the 90 days then allowed by §706(d). A discriminatory act which is not made the basis for a timely charge is the legal equivalent of a discriminatory act which occurred before the statute was passed. It may constitute relevant background evidence in a proceeding in which the status of a current practice is at issue, but separately considered, it is merely an unfortunate event in history which has no present legal consequences.

"Respondent emphasizes the fact that she has alleged a continuing violation. United's seniority system does indeed have a continuing impact on her pay and fringe benefits. But the emphasis should not be placed on mere continuity; the critical question is whether any present *violation* exists. . . ." (emphasis by the court)

Accordingly, the decision of the District Court which had dismissed the Complaint was affirmed.

The Court of Appeals in the instant case held that the decision in *United Airlines, Inc. v. Evans* was controlling. See Page A-15 of the Appendix attached to the Petition for Writ of Certiorari. The Court spoke as follows:

"Courts have held that if a Title VII or ADEA violation is of a continuing nature, the charge of discrimination filed with the appropriate agency may be timely as to all discriminatory acts encompassed by the violation so long as the charge is filed during the life thereof or within the statutory period (e.g., 180 days) which commences upon the violation's termination . . .

"To state such a continuing violation, however, a complaint must indicate that not only the injury,

but the discrimination is in fact ongoing. The district court held that that hurdle was not surmounted here, and we agree. A continuing violation is not stated if all that appears from the complaint is that the plaintiff continues to suffer from the ongoing effects of some past act of discrimination, *United Airlines, Inc. v. Evans* 431 U.S. 553, 558 (1977)."

See also footnote 8 on Page A-16 of the said Appendix.

The Circuit Courts of Appeals have uniformly implemented the holding of this Court in *Evans*. Thus, there exists no conflict among the circuits on the question of the sufficiency of facts required to be pleaded to constitute a present or continuing violation of Title VII or the ADEA.

The Court of Appeals for the Fifth Circuit in the case of *Charlier v. S. C. Johnson & Son, Inc.*, 556 F.2d 761 (CA 5-1977), specifically followed the holding of *Evans*, upon a finding "that based upon the allegations of plaintiffs' complaint, Johnson Wax's discharge of plaintiffs and its present refusal to reinstate them to their former positions does not constitute a continuing course of discrimination citing *Evans* at 765-766.

The same court in the case of *Chappell v. Machine Works Company*, 601 F.2d 1295, 1298 (CA 5-1979), again specifically followed *Evans* in affirming dismissal of plaintiff's complaint upon a finding that the 180-day period began to run on the date plaintiff was terminated, although she received severance pay past that date.

This opinion contains a well-reasoned and comprehensive analysis of the theory of continuing violations.

In *Clark v. Olinkraft, Inc.*, 556 F.2d 1219 (5th Circuit 1977), the same Court of Appeals stated on Page 1223 that it would not apply the *Evans* doctrine solely because the fact situation was completely dissimilar from that in *Evans*. On Page 1221, the court emphasized the fact that the plaintiff had alleged that the defendant was still promoting men with less seniority to better pay-

ing jobs and was continuing to pay men with less seniority a greater salary at the very time the complaint was filed. This case, therefore, merely highlights the importance of the *Evans* doctrine and the fact that that doctrine clearly applies to the circumstances in the instant case where no such continuing acts have occurred. It certainly does not stand for the proposition for which it is cited by the Petitioner on Page 11 of his Petition.

The Court of Appeals for the Eighth Circuit in the case of *Martin v. Georgia-Pacific Corp.*, 568 F.2d 58 (CA 8-1977) specifically followed *Evans* upon a finding that "the record is void of any showing that any discriminatory violation exists now, or has existed at any time subsequent to the incidents relied upon by plaintiff," *id.* at p. 62, citing *Evans* favorably and as authority for its holding.

The Court of Appeals for the Second Circuit in the case of *Smith v. American President Lines, Ltd.*, 571 F.2d 102 (CA 2-1978) likewise followed *Evans*, at p. 105 and p. 105, footnote 4., upon a finding affirming dismissal of the action that "if initially Smith had either set forth in his charge to the EEOC events which indicated that MEBA's (the Union's) refusal to investigate and process his grievance . . . was part of a continuing pattern of identifiable discriminatory conduct, or if he had filed an amended or second charge with respect to the Union's failure to represent him in separate proceedings . . . there would be no question of timeliness," at p. 106.

The Court of Appeals for the Sixth Circuit in the case of *Trabucco v. Delta Airlines*, 590 F.2d 315 (CA 6-1979), also specifically followed *Evans*, supra., at p. 316, in affirming dismissal of plaintiff's claim that her job reclassification constituted a continuing violation of Title VII, upon a finding that while the effects of the completed act may have continued, the act or the violation itself did not continue. This is directly in point with the instant case.

It is therefore respectfully submitted that far from there being a conflict between or among the circuits on the question of continuing violations, there is unanimity, as attested eloquently by all of the cases cited above.

Most of the decisions cited by the Petitioner antedate the controlling decision of *United Airlines, Inc. v. Evans*. Therefore, we do not discuss them since the law has now been clarified by the Supreme Court itself in this ruling opinion.

The questions 2 to 5 which are listed by the Petitioner on Page 2 of his Petition have almost uniformly been answered against the position for which he contends. In the case of *Chappell v. Machine Works Company*, 601 F.2d 1295 (CA 5-1979), the court stated on Page 1304 that:

> "It is clear, however, that a court must make an independent determination of whether jurisdiction exists rather than deferring to the Equal Employment Opportunity Commission. *Cutliff*, supra., 558 F.2d 807; *Reeb*, Supra., 516 F.2d 926."

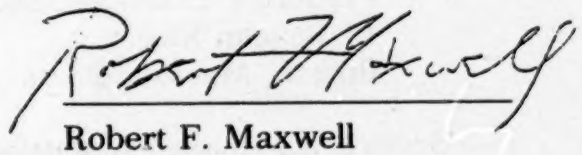
This doctrine that the court should make its own decision and not accept the finding of the EEOC as to jurisdictional requirements has been generally held to be the law. See *Richard v. McDonnell Douglas Corp.*, (CA 8-1972), 469 F.2d 1249; *Bartmess v. Drewrys U.S.A., Inc.* (CA 7-1971), 444 F.2d 1186; *Cox v. U.S. Gypsum Co.* (CA 7-1969), 409 F.2d 289; *Macklin v. Spector Freight Systems, Inc.* (CA 3-1973) 478 F.2d 979.

In the instant case, both the District Court and the Court of Appeals decided that the finding of the EEOC as to the Petitioner's timeliness and compliance with jurisdictional requirements was clearly erroneous. See opinion of the District Court, A-4 and A-5 of Appendix to Petition, and opinion of the Court of Appeals at A-14 and A-15.

The clear and cogent discussion of such decisions by the Court of Appeals makes unnecessary any detailed treatment herein. Under the above circumstances, the Petition for Writ of Certiorari should be denied.

CONCLUSION

The Respondent respectfully requests that the Petition for Writ of Certiorari be denied.



Robert F. Maxwell

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215 293-2353

Of Counsel:

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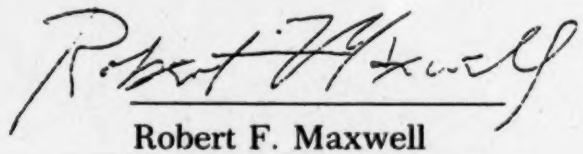
GOLDSTEIN & MANELLO
One Federal Street
Boston, MA 02110
617 426-3700

CERTIFICATE OF SERVICE

I, Robert F. Maxwell, one of the attorneys for the Respondent herein, hereby certify that on this 14th day of February, 1980, I served three copies of the attached Brief on the following:

Frederick T. Golder, Esq.
11 Beacon Street
Boston, Massachusetts 02108

Service was made by regular first-class mail, postage prepaid.



Robert F. Maxwell
Attorney for Respondent

APPENDIX R-1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ISADORE GOLDMAN, :
Plaintiff:

vs. : CIVIL ACTION
No. 78-710-MA

SEARS ROEBUCK & COMPANY, :
Defendant:

COMPLAINT

PARTIES

1. The plaintiff, Isadore Goldman, is a resident of Malden, Middlesex County, Massachusetts, and was and is an employee of Sears Roebuck & Company of Saugus, Essex County, Massachusetts, within the jurisdiction of this Court.

2. The defendant, Sears Roebuck & Company (Sears) is a corporation, engaged in an industry affecting commerce who has had fifteen or more employees for each working day in each of twenty or more calendar weeks during all years material, and is an employer covered by Title VII of the Civil Rights Act of 1964, and having a usual place of business in Saugus, Essex County, Massachusetts, within the jurisdiction of this Court.

JURISDICTION

3. This action arises and jurisdiction of this Court is invoked under the provisions of Title VII of the Civil Rights Act of 1964, Title 42 U.S.C. Sections 2000e et seq. (Title 42 U.S.C. Section 2000e-5), hereinafter referred to as the Act, and Title 28 U.S.C. Sections 1337 and 1343 and Title 29 U.S.C. Section 626. All conditions precedent to jurisdiction under Title 42 U.S.C. Section

2000e-5 has occurred or been complied with, to wit: a charge of employment discrimination was filed with the Equal Employment Opportunity Commission within 180 days of the commission of the unfair employment practice; a notification of right to sue was received from the Equal Employment Opportunity Commission on March 6, 1978, a copy of which is annexed hereto and marked "A"; this complaint has been filed within 90 days of receipt of the notification of right to sue. Jurisdiction of the Court is invoked to secure protection of and to redress deprivation of rights secured by Title 42 U.S.C. Sections 2000e et seq., which provides for injunctive and other relief against racial, religious, national origin, and sex discrimination in employment, and Title 29 U.S.C. Section 626, which provides for injunctive and other relief against age discrimination in employment.

4. The unlawful employment practices hereinafter alleged were committed by the defendant Sears in the Town of Saugus, Essex County, Massachusetts, within the jurisdiction of this Court.

SUBSTANTIVE ALLEGATIONS

5. On or about March 30, 1962, the plaintiff began employment with the defendant Sears in their large appliance department at their Saugus, Massachusetts location. From 1962 to 1972 the plaintiff continued to worl for the defendant Sears at the Saugus, Massachusetts location, in their large appliance department. Sometime in 1972 there was a substantial change in management personnel.

6. From the time of this management personnel change, the plaintiff has been subjected to harassment and other discriminatory treatment by those management personnel. The plaintiff was continually lectured by these management personnel concerning the selling of service policies with every major appliance. Although,

the real reason the plaintiff was subjected to this was on account of his religious beliefs and on account of his age.

7. On or about July 27, 1973, the plaintiff met with the store manager (Thomas K. Moore) of the defendant Sears. The plaintiff was told that he was not a professional salesman and was transferred to the shoe department of the defendant Sears at a substantial loss of income.

8. The plaintiff was transferred to the shoe department, even though in 1966 he sustained an injury to his lower back while in the employ of the defendant Sears, and the defendant Sears knew or should have known through its agents that the injury to his lower back would be aggravated by his employment in the shoe department. As a result of the plaintiff's transfer to the shoe department of the defendant Sears, the plaintiff did in fact aggravate his lower back condition. The defendant Sears was notified of this situation by letters received from physicians treating the plaintiff. Copies of the letters are attached to this complaint and marked "B".

9. Sometime in 1975 the plaintiff was transferred from the Shoe department to the electrical department at the Saugus location of the defendant Sears. The plaintiff thereby sustained an additional loss of income as a result of this transfer.

10. The plaintiff has made repeated requests to be transferred back to the large appliance department, but the defendant Sears has refused. The plaintiff alleges that in transferring him out of the large appliance department, transferring him to the shoe department, and then transferring him to the electrical department, the defendant discriminated against the plaintiff solely because of his religious beliefs (Jewish) and because of his age, and that, therefore, the defendant committed an unlawful employment practice against the plaintiff in violation of Title 42 U.S.C. Section 2000e-5 and Title 29 U.S.C. Section 626.

11. On or about July 16, 1976, the plaintiff filed a charge in writing with the Equal Employment Opportunity Commission complaining that he had been transferred to a lower position by the defendant Sears solely because of his religious beliefs and age. Pursuant to Section 706(b) of the Act, the charge was forwarded to the Massachusetts Commission Against Discrimination. Pursuant to that provision, the Equal Employment Opportunity Commission assumed jurisdiction over the charge on the 61st day of receipt.

12. On October 13, 1977, the Commission found that reasonable cause existed to believe that the charge filed by the plaintiff was true and that a violation of the Act by the defendant had occurred. A copy of the Commission's said finding is attached hereto and marked "C". On March 6, 1978 the plaintiff was notified by the Commission that it was unable to obtain voluntary compliance on the part of the plaintiff's employer by informal methods of conference, concilliation, and persuasion, and that plaintiff had 90 days from the date of the receipt of the Commission's letter to bring a civil action in the United States District Court. A copy of the Commission's said letter is attached hereto and marked "D".

13. The plaintiff has lost a considerable amount of pay, and has suffered personal injuries and other indignities as a result of the defendant's intentional unlawful discrimination against him.

14. The plaintiff demands trial by jury.

WHEREFORE, the plaintiff demands judgment as follows:

1. That this Court order defendant to assign plaintiff immediately to the large appliance department at the Saugus location.

2. That the Court order the defendant to pay the plaintiff such additional back wages, including overtime

compensation, that he would have received had defendant not transferred him to his present position.

3. That punitive damages be awarded to the plaintiff on account of the defendant's intentional and willful violation of Title VII of the Civil Rights Act of 1964 and Title 29 U.S.C. Section 626.

4. That the Court award to the plaintiff, the costs of this action, including reasonable attorney's fees.

5. That the Court grant plaintiff such other relief as may be appropriate under the circumstances of this case.

(s)

Isadore Goldman

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

Then personally appeared the above named Isadore Goldman and made oath that he has read the allegations contained in the complaint and that they are true to the best of his knowledge and belief, before me

(s)

Notary Public

My Commission Expires:
May 19, 1983

By his attorney,

(s)

Attorney for Plaintiff
Frederick T. Golder
Shulman & Golder
89 State Street
Boston, Mass. 02109
523-2206

Exhibits A & D

NOTICE OF RIGHT TO SUE
(Conciliation Failure)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
150 Causeway Street, 10th Floor
Boston, Massachusetts 02114

Mr. Isadore Goldman
13 Warren Avenue
Malden, Massachusetts 02148

Charge Number
011762799

EEOC Representative
Daniel O. Steele, District Counsel

Telephone Number
(617) 223-4723

(See Section 706(f) (1) and (f) (3) of the Civil Rights of 1964 on reverse of this form.)

The Commission has found reasonable cause to believe that your charge of employment discrimination is true but has not entered into a conciliation agreement to which you are a party because attempts to achieve such a voluntary settlement with the respondent(s) have been unsuccessful.

The Commission has determined that it will not bring a civil action against the respondent(s) and accordingly is issuing this Notice of Right to Sue. With the issuance of this Notice the Commission terminates its processing of your charge, except that the Commission

may seek status as intervenor if you decide to sue on your own behalf as described below.

If you want to pursue your charge further, you have the right to sue the respondent(s) named in your charge in United States District Court. IF YOU DECIDE TO SUE, YOU MUST DO SO WITHIN NINETY (90) DAYS FROM THE RECEIPT OF THIS NOTICE OF RIGHT TO SUE; OTHERWISE YOUR RIGHT TO SUE IS LOST.

If you cannot afford or have been unable to obtain a lawyer to represent you, you should be aware that the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-5(f) (1) permits the U.S. District Court having jurisdiction in your case to appoint a lawyer to represent you. If you plan to request appointment of a lawyer to represent you, you must make this request of the U.S. District Court in the form and manner it requires. Your request to the U.S. District Court should be made well in advance of the 90-day period mentioned above.

You may contact the EEOC representative named above if you have any questions about your legal rights including advice on which U.S. District Court has jurisdiction to hear your case or if you need to inspect and copy information contained in the Commission's case file.

An information copy of this Notice of Rights to Sue has been sent to the respondent(s) shown below.

On Behalf of the Commission

(s)

March 6, 1978

(Date)

EVERETT O. WARE
DISTRICT DIRECTOR
(Typed Name and Title of EEOC Official)

cc: Sears, Roebuck & Co.

FORM 161-A

Exhibit B

JOHN M. CARROLL, M.D., INC.
INTERNAL MEDICINE AND CARDIOLOGY
SUBHASH C. BOWRY, M.D.
INTERNAL MEDICINE AND GASTROENTEROLOGY
388 PLEASANT STREET
MALDEN, MASS. 02148

Telephone 322-7178 or 321-3003

April 10, 1974

RE: Isadore Goldman, 13 Warren Avenue, Malden

To Whom It May Concern:

The above-named patient has been under my care for the past year and a half and has severe vericose veins and has recently developed baker's cyst. This situation is aggravated by frequent bending, and I recommended to him that he try to secure a position that would not require a lot of bending.

yours truly,

(s)
John M. Carroll, MD., Inc.

JMC:mm

NORTH SUBURBAN ORTHOPEDIC ASSOCIATES, INC.

JOSEPH ABATE, M.D.
JOEL SAPERSTEIN, M.D.

721 Main Street
Melrose, MA 02176
665-9500

410 Highland Avenue
Malden, MA 02148
324-6835

May 22, 1974

John Carroll, M.D.
288 Pleasant Street
Malden, Massachusetts 02148

RE: Isadore Goldman
13 Warren Avenue
Malden, Massachusetts

Dear Dr. Carroll:

Isadore Goldman is a 55 year old gentleman who has been having aching pain in back for the past year. He is seen in Orthopedic Consultation on 5-22-74. Pain has been worse since he changed his job from a refrigerator salesman to a foot salesman. Of interest is that approximately 5 years ago, he hurt himself in the refrigerator department while working for Sears and Roebuck. Some back pain since that time.

Physical exam: Reveals findings of classical sciatic neuritis on the left with a negative neurological exam. X-rays of the back show mild degeneration of the L-5, S-1 disc.

Diagnosis: Low back strain, question ruptured disc, 1-5, s-1. Advice given for acute bed rest for two weeks, Butazolidin for a week. I advise this gentleman when he does get back to work to get change of job description

from the Shoe Department back into the Appliance Department where he can do a little more standing.

Sincerely,

(s)

Joel Saperstein, M.D.

JS/cz
cc: Mr. Palmer, Sears Roebuck Company
cc: Mrs. Wallace, Sears Roebuck Company with statement

NORTH SUBURBAN ORTHOPEDIC ASSOCIATES, INC.

JOSEPH ABATE, M.D.
JOEL SAPERSTEIN, M.D.

721 Main Street
Melrose, MA 02176
665-9500

410 Highland Avenue
Malden, MA 02148
324-6835

June 5, 1974

Sears Roebuck Company
N.E. Shopping Center,
Route Saugus
Saugus, Massachusetts

RE: Isadore Goldman
13 Warren Avenue
Malden, Massachusetts

Attention: Mr. Palmer, Personnel

Dear Sir:

Mr. Isadore Goldman has been under my care since May 22, 1974, when he first consulted me for an acute low back strain and question or ruptured disc. The patient feels that his occupation in the shoe department is generally related to exacerbration of low back symptoms. The patient has been treated with rest and is now doing much better, although he still has some mild symptoms about his back. There is no evidence, at this time, that there are conditions that would lead him to direct hospitalization. At this time, it is my opinion that Mr. Goldman is suffering from chronic low back strain and I would advise very strongly that he be placed in an occupational area where he will have to do a minimal amount of lifting, bending, stooping, and pulling.

The patient advises me that he was previously working in the Appliance Department at Sears and Roebuck,

and he would like to return to this job, as it requires less than the previously described stresses and strains which he undergoes in the shoe department.

It would be my advice, at this time, that this gentleman be considered for transfer to the Appliance Department since working in the shoe department may increase his symptoms and may make him have a prolonged disability and inability to work.

Gentleman will be seen by me in another month; hopefully, arrangements will be able to be made at the place of occupation to place him in the atmosphere where he will feel more confident.

Sincerely;

(s)

Joel Saperstein, M.D.

JS/cz
cc of Letter of 5-22-74. js
cc: Mrs. Wallace, Sears Roebuck Company with statement
cc: Mr. Isadore Goldman

NORTH SUBURBAN ORTHOPEDIC ASSOCIATES, INC.
JOSEPH ABATE, M.D.
JOEL SAPERSTEIN, M.D.

July 10, 1974

Goldman, Isadore

Symptoms persist in this gentleman. He still has symptoms of low back derangement. It is in my manner of speaking, a reality that this gentleman should be placed in this atmosphere where he can undergo less daily stresses and strains on his low back. The gentleman tells me that there is a certain job in his Co. that would be more suitable to him, namely, as I have mentioned before, working in the appliance department. It is inconceivable to me, at this time, that the Co. would not go along with this simple request. I think that they are risking, in this gentleman, that he really has a work related injury, if he continues with the shoe department.

I am hoping that he will be able to manage his symptoms appropriately. We will see him again at the end of the summer, prn.

JS/cz
cc to Atty with statement
cc to Ind. Ins with statement

Exhibit C

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
DISTRICT OFFICE
150 Causeway Street
Boston, Massachusetts 02114

(617) 223-4535

District Director Connecticut Maine Massachusetts New Hampshire Rhode Island Vermont	:	In reply refer to: Charge No. 011762799
Isadore Goldman 13 Warren Avenue Malden, Massachusetts 02148	:	Charging Party
Sears Roebuck & Company 1325 Broadway New England Shopping Center: Saugus, Massachusetts 01906	:	Respondent

DETERMINATION

Under the authority vested in me by Section 29 CFR 1601.21(d) of the Commission's Procedural Regulations (September 23, 1977), I issue on behalf of the Commission, the following determination as to the merits of the subject charge.

Respondent is an employer within the meaning of Title VII and the timeliness, deferral, and all other jurisdictional requirements have been met. Proceedings of the state agency were suspended in this case.

Charging Party alleges that since July 1973, and continuing, Respondent discriminated against him in terms and conditions of employment, wages, transfer, job classification and demotion because of his religion, (Jewish) in violation of Title VII of the Civil Rights Act of 1964, as amended.

Based on the evidence of record, there is reasonable cause to believe that Respondent discriminated against Charging Party in the manner alleged, in violation of Title VII of the Civil Rights Act of 1964, as amended.

Having determined that there is reasonable cause to believe the charge is true, the Commission now invites the parties to join with it in a collective effort toward a just resolution of the matter. The parties may indicate their willingness to enter into settlement discussion by completing the enclosed invitation and returning it to this office in the self-addressed envelope within ten (10) days of the receipt of this letter.

On Behalf of the Commission:

October 13, 1977 (s)

Date EVERETT O. WARE
DISTRICT DIRECTOR

EOW:mc
Enclosure: (3)